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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/624,675

07/23/2003

Rod Berube

00167-362002

6691

26166

7590

09/14/2006

FISH & RICHARDSON P.C.
SMITH & NEPHEW, INC.
1450 BROOKS ROAD
MEMPHIS, TN 38116

EXAMINER

WOO, JULIAN W

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 09/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/624,675

Applicant(s)

BERUBE ET AL.

Examiner

Julian W. Woo

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 55-88 is/are pending in the application.
- 4a) Of the above claim(s) 69-80 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 55-59, 61-68, 81-84, 86 and 87 is/are rejected.
- 7) ☒ Claim(s) 60, 85 and 88 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 07/23/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of claims 55-68 and 81-88 in the reply filed on July 14, 2006 is acknowledged.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 55, 56, 61-68, 81-84, and 87 are rejected under 35 U.S.C. 102(b) as being anticipated by Bokros (4,149,277). Bokros discloses, at least in the figures and in col. 3, lines 18-35 and col. 5, line 26 to col. 6, line 31; a tissue fastener (10 or 30) including a shaft (12) or hollow shaft (26 or 32) having a member (16 on shaft 12 or sutures on shaft 32) disposed thereon for lodging the shaft within soft tissue, a tissue engaging head (22 or 24) or a solid tissue engaging head having a maximum transverse cross-sectional length longer than the maximum transverse cross-sectional length of the shaft, and a region of the shaft being formed of a woven mesh, where the region comprises substantially an entire length of the shaft, where the shaft is hollow and defines an interior passage, where the passage is open at a distal end of the shaft (34), where the passage is closed at a distal end of the shaft (26 is closed by element 12); where the head has a flat distal surface, a toothed distal surface (where the surface is

Art Unit: 3731

indented to receive element 24), and an opening in communication with the passage; and where the head is disposed at a relatively flexible region of the shaft.

4. Claims 55, 57, and 59 are rejected under 35 U.S.C. 102(b) as being anticipated by Homsy (4,455,690). Homsy discloses, at least in figure 1 and in col. 2, lines 4-32; a tissue fastener comprising a shaft (12) having a member (14) for lodging the shaft within soft tissue and a tissue engaging head (14 at another end of the shaft) having a maximum transverse cross-sectional length longer than a maximum transverse cross-sectional length of the shaft, and a region of the shaft being formed of a woven mesh, where the member and the head are molded onto the mesh, and where the fastener is made of polymeric material (polyamide and perfluorocarbon).

5. Claims 55, 58, 81, and 86 are rejected under 35 U.S.C. 102(b) as being anticipated by Hausner (3,513,484). Hausner discloses, at least in the figures and in col. 1, line 62 to col. 2, line 39; a tissue fastener including a shaft (10) or hollow shaft (12) having a member or barb (24) disposed thereon for lodging the shaft within soft tissue, a tissue engaging head (14) or a solid tissue engaging head having a maximum transverse cross-sectional length longer than the maximum transverse cross-sectional length of the shaft, and a region of the shaft being formed of a woven mesh.

Allowable Subject Matter

6. Claims 60, 85 and 88 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. The following is a statement of reasons for the indication of allowable subject matter: None of the prior art of record, alone or in combination, discloses a tissue fastener including, inter alia, a shaft or hollow shaft having a member disposed thereon for lodging the shaft within soft tissue, a tissue engaging head or a solid tissue engaging head having a maximum transverse cross-sectional length longer than the maximum transverse cross-sectional length of the shaft, and a region of the shaft being formed of a woven mesh, where the fastener is made from a bioabsorbable material, and where the member and the head are molded onto the mesh.

As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sump et al. (6,872,227) teach a tissue fastener.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian W. Woo whose telephone number is (571) 272-4707. The examiner can normally be reached Mon.-Fri., 7:00 AM to 3:00 PM Eastern Time, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Art Unit: 3731

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Julian W. Woo
Primary Examiner

September 11, 2006